



December 22, 2006

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The Honorable James Ware  
United States District Court, Northern District of California  
San Jose Division  
Courtroom 8, 4th Floor  
280 South 1st Street  
San Jose, CA 95113

Re: *Granite Rock v. Teamsters Local 287 & International Brotherhood of Teamsters*,  
District Court Case No. C 04 2767 JW

Dear Judge Ware:

The Court's December 13 Order Certifying Appeal Pursuant to Rule 54(b) found "the issue to be appealed is legally and factually severable from the remainder of the case still pending before the Court." (Order, p. 3:13-14.) The Court also found that, absent entry of a final and appealable judgment, "not only would Plaintiff suffer prejudice due to lengthy delay, but the interest of judicial economy would not be furthered." (Order, p. 4:6-7.) The Court granted Plaintiff's motion to certify under Rule 54(b) the order dismissing Defendant International Brotherhood of Teamsters.

Subsequently, on December 18, the Court entered a Final Judgment and Certificate of Appealability. Although the Court determined in its December 13 Order that there was no just reason for delay, these words were not included in the final judgment. Plaintiff believes the final judgment is sufficient to allow an immediate appeal in light of the Court's express determinations in the December 13 Order. However, to err on the side of caution, Plaintiff is submitting the attached [Proposed] Amended Final Judgment and Certificate of Appealability that includes a statement that the "Court has expressly determined there is no just reason for delay." See Goelz & Watts, *California Practice Guide: Ninth Circuit Civil Appellate Practice* (Rutter 2006), § 2:122 ("'Magic language' required: The district court's order must include an '*express* determination that there is *no just reason for delay*.'" (citing *Natl. Assn. of Home Builders v. Norton*, 325 F.3d 1165, 1167 (9th Cir. 2003); *Frank Briscoe Co., Inc. v. Morrison-Knudsen Co., Inc.*, 776 F.2d 1414, 1416 (9th Cir. 1985)).

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Thank you for your consideration of the [Proposed] Amended Final Judgment and Certificate of Appealability.

Very truly yours,



Alan S. Levins

ASL/lml

cc: Peter Nussbaum, Esq., Counsel for International Brotherhood of Teamsters (via  
electronic filing)  
Duane Beeson, Esq., Counsel for Teamsters Local 287 (via electronic filing)

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8

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN JOSE DIVISION

12 GRANITE ROCK COMPANY,

13 Plaintiff,

14 v.

15 INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, FREIGHT,  
16 CONSTRUCTION, GENERAL  
DRIVERS, WAREHOUSEMEN AND  
17 HELPERS, LOCAL 287; and  
INTERNATIONAL BROTHERHOOD OF  
18 TEAMSTERS,

19 Defendants.  
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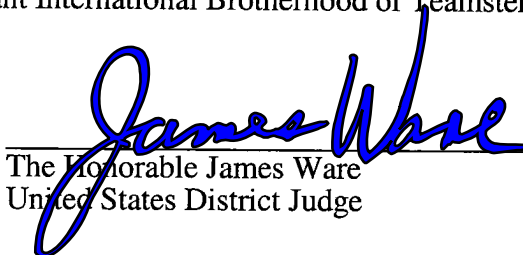
Case No. C 04 2767 JW

*James H. Lee*  
**[PROPOSED] AMENDED FINAL  
JUDGMENT AND CERTIFICATE OF  
APPEALABILITY**

1 Pursuant to the Court's December 13, 2006 Order Certifying Appeal Pursuant to Rule  
2 54(b) (see Docket Item No. 212), the Court enters final judgment in favor of Defendant International  
3 Brotherhood of Teamster, and against Plaintiff Granite Rock Company.

4 For the reasons stated in the Court's December 13, 2006 Order, the Court has  
5 expressly determined there is no just reason for delay. Therefore, the Court certifies for appeal the  
6 case between Plaintiff Granite Rock and Defendant International Brotherhood of Teamsters.

7  
8 Dated: January 12 2007

  
The Honorable James Ware  
United States District Judge

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